

EXHIBIT 3

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 No. 18 Civ. 2949 (ARR) (RER)

- - - - -x

5
6 SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

7
8 Plaintiffs,

-against-

9
10 XOOM ENERGY, LLC AND XOOM ENERGY
NEW YORK, LLC,
11 Defendants.

12 - - - - -x

13
14 16 Court Street
Brooklyn, New York 11241

15
16 August 30, 2022
10:21 a.m.

17
18 DEPOSITION of SUSANNA MIRKIN (REDACTED),
19 a Plaintiff in the above-entitled action,
20 held at the above time and place, taken
21 before SAMUEL HITTIN, a Shorthand Reporter
22 and Notary Public of the State of New
23 York, pursuant to the Federal Rules of
24 Civil Procedure, order and stipulations
25 between Counsel.

1 S. MIRKIN
2 don't remember anything specific about the
3 decision to switch from XOOM to Viridian?
4 A. Correct.
5 Q. Okay. You later sued Viridian
6 in a putative class action like this one,
7 right?
8 A. Correct.
9 Q. And why?
10 A. Because of their rates.
11 Q. What about their rates?
12 A. We spoke to the lawyers, and
13 they were overcharging us as well, so
14 that's when we decided to sue them.
15 Q. Okay. Tell me in your words
16 what that case was.
17 A. It was about the rates and how
18 they were overcharging us.
19 Q. Okay. And do you know how that
20 case was resolved?
21 A. Yes. It was settled.
22 Q. When?
23 A. I believe two years ago.
24 Q. And what payment did you receive
25 in connection with that settlement?

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1 S. MIRKIN
2 A. I received \$10,000 under my
3 name, and under 10,000 under my husband's
4 name.
5 Q. Okay. Ms. Mirkin, do you mind
6 if we take a break?
7 A. Sure.
8 THE VIDEOGRAPHER: We're going
9 off the record at 11:39 a.m.
10 [Whereupon, a short break was
11 taken.]
12 THE VIDEOGRAPHER: We're back on
13 the record at 11:52 a.m.
14 Q. Ms. Mirkin, can you tell me the
15 names of the lawyers who are representing
16 you in this case?
17 A. Steven Cohen, Daniel Hymowitz,
18 and Steven.
19 Q. Mr. Wittels?
20 A. Yes.
21 Q. Anybody else?
22 A. No.
23 Q. Okay. Do you have any
24 agreements with other lawyers about this
25 lawsuit --

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1 S. MIRKIN
2 A. No.
3 Q. -- or with -- about XOOM?
4 A. No.
5 Q. How did you find your lawyers?
6 A. From Daniel, Daniel Hymowitz.
7 Q. Is he someone you know?
8 A. He's a family friend.
9 Q. I see.
10 And you spoke with him initially
11 about Viridian? Well, strike that.
12 I don't -- I don't mean to ask
13 about discussions you had with your
14 lawyers. I don't think that an initial
15 consultation would be, but in any event,
16 Mr. Daniel was the lawyer you first met
17 with about a variable rate lawsuit?
18 MR. WITTELS: Objection.
19 Q. Is that right?
20 A. With which company?
21 Q. Any company.
22 A. With Viridian and XOOM, correct.
23 Q. Okay. Okay. We talked a little
24 bit earlier about XOOM and other ESCOs
25 seeking a profit in connection with their

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1 S. MIRKIN
2 business. Do you remember that?
3 A. Correct.
4 Q. Do you have any opinion about
5 what's a reasonable profit margin for XOOM
6 to charge?
7 A. No.
8 [Whereupon, testimony continues
9 in confidential transcript.]
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2 A. No.
3 Q. Okay. Okay. Thank you very
4 much.
5 A. Okay.
6 THE VIDEOGRAPHER: We are off
7 the record at 12:08 p.m., and this
8 concludes today's testimony given by
9 Susanna Mirkin.
10
11 [TIME NOTED: 12:07 p.m.]
12
13 _____
14 SUSANNA MIRKIN
15 SUBSCRIBED AND SWORN TO
16 BEFORE ME THIS _____
17 DAY OF _____, 2022.
18
19 _____
20 NOTARY PUBLIC
21
22
23
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1
2 I N D E X
3
4 WITNESS EXAMINATION BY PAGE
5 SUSANNA MIRKIN MATT MATTHEWS 7, 94
6 STEVEN WITTELS 92
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8 E X H I B I T S
9
10 PLAINTIFF'S DESCRIPTION PAGE
11 EXHIBIT 1 - CON EDISON RECORD 20
12 EXHIBIT 2 - PAGE 19 OF WITNESS'S 20
13 COMPLAINT
14 EXHIBIT 3 - FIRST PAGE OF SOME 20
15 CONTRACT TERMS AND
16 CONDITIONS
17 EXHIBIT 4 - BILLING INFORMATION 35
18 FOR BORIS MIRKIN,
19 21 PEGGY LANE, STATEN
20 ISLAND, NEW YORK 10306
21 EXHIBIT 5 - FULL COPY OF THOSE 71
22 TERMS AND CONDITIONS
23
24
25

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1
2 CERTIFICATION
3
4 I, Samuel Hittin, a Notary Public for
5 and within the State of New York, do
6 hereby certify:
7 That the witness whose testimony as
8 herein set forth, was duly sworn by me;
9 and that the within transcript is a true
10 record of the testimony given by said
11 witness.
12 I further certify that I am not
13 related to any of the parties to this
14 action by blood or marriage, and that I am
15 in no way interested in the outcome of
16 this matter.
17 IN WITNESS WHEREOF, I have hereunto
18 set my hand this 6th day of September,
19 2022.
20
21
22 
23 SAMUEL HITTIN
24 * * *
25

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1
2 ERRATA SHEET
3 VERITEXT/NEW YORK REPORTING, LLC
4
5 CASE NAME: SUSANNA MIRKIN AND BORIS
6 MIRKIN, ET AL VS. XOOM ENERGY,
7 LLC, ET AL
8 DATE OF DEPOSITION: AUGUST 30, 2022
9 WITNESS' NAME: SUSANNA MIRKIN
10
11 PAGE/LINE(S)/ CHANGE REASON
12
13
14
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19
20
21 SUSANNA MIRKIN
22 SUBSCRIBED AND SWORN TO
23 BEFORE ME THIS _____ DAY
24 OF _____, 2022.
25
26 NOTARY PUBLIC
27
28 MY COMMISSION EXPIRES _____
29

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